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Amendatory Contract  
No. 8-07-20-X0356

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2  
3 UNITED STATES  
4 DEPARTMENT OF THE INTERIOR  
5 BUREAU OF RECLAMATION  
6 Central Valley Project, California

7 AMENDMENT TO AGREEMENT TO TRANSFER THE  
8 OPERATION, MAINTENANCE, AND REPLACEMENT AND  
9 CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES  
10 RELATED TO THE FRIANT-KERN CANAL AND ASSOCIATED WORKS

11 PREAMBLE

12 THIS AMENDMENT TO AGREEMENT TO TRANSFER THE OPERATION,  
13 MAINTENANCE, AND REPLACEMENT AND CERTAIN FINANCIAL AND  
14 ADMINISTRATIVE ACTIVITIES RELATED TO THE FRIANT-KERN CANAL AND  
15 ASSOCIATED WORKS, (hereinafter referred to as "Amendment"), effective the 25<sup>th</sup> day of  
16 February, 2003, entered into in pursuance generally of the Act of Congress of  
17 June 17, 1902 (32 Stat. 388), and the acts amendatory thereof or supplementary thereto,  
18 including Section 5 of the Act of August 13, 1914 (38 Stat. 687), all collectively hereinafter  
19 referred to as the Federal Reclamation laws, between the UNITED STATES OF AMERICA,  
20 hereinafter referred to as the United States, and the FRIANT WATER USERS AUTHORITY,

21 hereinafter referred to as the Authority, a public agency of the State of California, duly  
22 organized, existing, and acting pursuant to the laws of the State of California,

23 WITNESSTH, That:

24 EXPLANATORY RECITALS

25 WHEREAS, the United States and the Authority entered into that certain  
26 Agreement to Transfer the Operation, Maintenance, and Replacement and Certain Financial and  
27 Administrative Activities Related to the Friant-Kern Canal and Associated Works, Contract  
28 No. 8-07-20-X0356 (Transfer Agreement), effective March 1, 1998; and

29 WHEREAS, the parties desire to amend the Transfer Agreement in order to  
30 modify certain administrative and financial provisions thereof.

31 NOW THEREFORE, in consideration of the covenants herein contained, it is  
32 hereby mutually agreed that the Transfer Agreement is amended, as follows:

33 1. Article 11 of the Transfer Agreement is deleted in its entirety and replaced  
34 with the following:

35 COST RECOVERY FOR AUTHORITY OPERATION, MAINTENANCE, AND  
36 REPLACEMENT (OM&R) ACTIVITIES; TERMINATION OF WATER DELIVERIES

37 11. As of the effective date of this Agreement, the Authority shall be responsible for  
38 directly funding the OM&R of the Project Works transferred hereby. Except as otherwise  
39 provided herein, the parties acknowledge that the United States will no longer provide funding  
40 through the appropriations process for such OM&R. The United States hereby delegates to the  
41 Authority all required authority under statutes, contracts, regulations, and policies to collect for

42 OM&R of the Project Works. The procedures and authorities to be utilized by the Authority for  
43 such direct funding are set forth in this Article 11.

44 (a) OM&R Budgets. Not later than ninety (90) days before the start of each  
45 Fiscal Year, the Authority shall submit to each Water Delivery Contractor, and all Parties  
46 Entitled to Utilize or Receive Other Water, proposed budgets for each of the next two (2)  
47 succeeding Fiscal Years for all activities of the Authority to be carried out under this Agreement.  
48 The budgets so developed shall include amounts necessary to establish the reserve fund  
49 described in Article 13 hereof and such other reserves as may be determined to be necessary by  
50 the Authority from time to time. The Authority shall afford each Water Delivery Contractor and  
51 all Parties Entitled to Utilize or Receive Other Water the opportunity to submit comments on  
52 such proposed budgets by thirty (30) days before commencement of the Fiscal Year. Except as  
53 otherwise provided in the Memorandum of Understanding described in Article 11(f) hereof, any  
54 dispute(s) regarding the proposed budgets shall be resolved in the manner described in Article 9  
55 hereof. The Authority shall submit the final budget for each Fiscal Year to the Contracting  
56 Officer prior to the start of that Fiscal Year. The Authority shall use reasonable efforts to  
57 perform its responsibilities under this Agreement in accordance with the applicable final budget.

58 (b) Cost Recovery Methodology. The Authority shall develop a methodology  
59 to recover all costs incurred by the Authority in carrying out its responsibilities under this  
60 Agreement, including without limitation all costs described in the budgets prepared pursuant to  
61 Article 11(a) hereof.

62 (1) The Authority's cost recovery methodology shall (i) provide for the  
63 equitable allocation of the costs to be recovered among Water Delivery Contractors with an  
64 obligation to pay for water delivered or conveyed through the Project Works and all Parties  
65 Entitled to Utilize or Receive Other Water with an obligation to pay therefor, including without  
66 limitation the United States; (ii) provide for the equitable allocation of the costs to be paid to the  
67 San Luis and Delta-Mendota Water Authority pursuant to the Memorandum of Understanding  
68 described in Article 11(f) hereof; and (iii) clearly set forth the manner in which all such costs  
69 shall be collected by the Authority, including deadlines for payments and/or deposits required of  
70 Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water under the  
71 methodology.

72 (2) Such methodology shall recover costs in lieu of the conveyance  
operation and maintenance cost component and conveyance pumping operation and maintenance  
74 cost component heretofore calculated by the United States pursuant to its ratesetting policies for  
75 the Project. In addition to OM&R costs for directly funding the OM&R of the Project Works,  
76 such methodology shall recover power costs for conveyance pumping incurred by the United  
77 States for the production or transmission of such power that are payable by the Water Delivery  
78 Contractors, Parties Entitled to Utilize or Receive Other Water, and contractors in the Friant  
79 Division pursuant to the Memorandum of Understanding described in Article 11(f) hereof, in  
80 connection with the delivery or conveyance of water through the Project Works.

81 (3) The Authority's cost recovery methodology, and any subsequent  
82 amendments thereto, shall be approved by the Authority and provided to all parties with payment

83 obligations under this Article 11 by July 1 of each year, or not less than sixty (60) days prior to  
84 the effective date of any amendment thereof. Except as otherwise specified in the Memorandum  
85 of Understanding described in Article 11(f) hereof, any dispute(s) regarding the Authority's cost  
86 recovery methodology shall be resolved in the manner described in Article 9 hereof. The  
87 Contracting Officer has approved the Authority's initial cost recovery methodology. All  
88 proposed amendments shall be submitted to the Contracting Officer for review and comment  
89 concurrent with the dissemination to all parties with payment obligations noted above.

90 (c) Deficiencies in Cost Recovery. The Authority is not obligated to provide  
91 funding from non-Federal sources for the cost of delivering water to parties who do not pay the  
92 Authority in full for OM&R of Project Facilities.

93 (1) In the event any Water Delivery Contract or obligation to deliver  
94 Other Water provides for or results in the payment of less than all of the costs to be recovered by  
95 the Authority in accordance with Article 11(b) hereof (a "deficiency"), whether resulting from  
96 the inadequacy of contract provisions between the Water Delivery Contractor or Party Entitled to  
97 Utilize or Receive Other Water and the United States to cover the Authority's OM&R costs,  
98 delinquency in payment of amounts due as described in Article 11(d), or otherwise, the  
99 United States shall pay to the Authority the amount of any such deficiency.

100 (2) Except as otherwise provided under this Article 11(c), payment for  
101 such deficiencies shall be made through a separate service contract or such other appropriate  
102 legal instrument as may be entered into by the parties from time to time, by the terms of which  
103 the United States agrees to pay or provide funding to the Authority for water delivery services

provided under this Agreement to the United States on behalf of the parties incurring the  
105 deficiencies. The solicitation and award of any service contract shall be made pursuant to the  
106 applicable Federal acquisitions laws, regulations, and policies governing such contracts,  
107 including the Federal Acquisition Regulations (FAR), and the Department of the Interior and  
108 Bureau of Reclamation Acquisition Regulations. Payments made by the United States to the  
109 Authority for such deficiencies shall become the financial obligation of the deficient party to the  
110 Contracting Officer.

111 (3) If payments for deficiencies as provided in this Article 11(c) are  
112 not timely made by the United States in accordance with said service contract or other  
113 appropriate legal instrument, the Authority may exercise its rights under Article 11(d).

114 (d) Termination of Water Deliveries. Subject to subparagraphs (1) and (2) of  
115 this Article 11(d), in the event any amount due to or to be collected by the Authority from a  
116 Water Delivery Contractor or any other party pursuant to Article 11 hereof is not paid when due  
117 (a "delinquency"), the Authority is authorized by the United States to discontinue delivery and  
118 conveyance of water to or for such Water Delivery Contractor or other party until such time as  
119 the delinquency is cured.

120 (1) The Authority shall give the Contracting Officer and the delinquent  
121 party written notice of the delinquency and of the date deliveries will be terminated if the  
122 delinquency is not cured. The Contracting Officer and the Authority shall agree in writing, from  
123 time to time, on the appropriate timing and length of such notice period.

124 (2) In the event, and only in the event, the Contracting Officer directs  
125 the Authority in writing to deliver or convey water to or for a delinquent party, the United States  
126 shall be liable to the Authority for the costs to be recovered from such party under Article 11(c)  
127 of this Agreement, and the Authority shall have no obligation to collect any amounts associated  
128 with such water from the delinquent parties.

129 (e) Interest. In the event any amounts due to the Authority from the  
130 United States under this Agreement are not paid when due, in addition to exercising the rights  
131 afforded the Authority under Article 11(c) and Article 11(d) hereof, the Authority will receive  
132 interest on the delinquent amounts pursuant to the Prompt Payment Act, as amended  
133 (31 USC 3901, et seq.); Provided, the Authority shall have previously submitted appropriate  
134 invoices to the United States in accordance with 48 CFR Section 32.907-1.

135 (f) Recovery of Certain Costs and Memorandum of Understanding. The  
136 parties acknowledge that the OM&R of certain Project facilities benefitting parties in the Friant  
137 Division will be performed by the San Luis and Delta-Mendota Water Authority pursuant to that  
138 certain Agreement to Transfer Operation and Maintenance and Replacement and Certain  
139 Financial and Administrative Activities Related to the San Luis and Delta-Mendota Canals,  
140 Tracy Pumping Plant, and O'Neill Pumping/Generating Plant, San Luis Drain and Associated  
141 Works. In connection therewith, the Authority has entered into that certain Memorandum of  
142 Understanding Between the Friant Water Users Authority and the San Luis and Delta-Mendota  
143 Water Authority Relating to Allocation, Collection, and Payment of Operation, Maintenance, and  
144 Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities,

145 effective March 1, 1998, as it may be amended by the parties thereto from time to time. Pursuant  
146 to such Memorandum of Understanding, certain OM&R costs described therein will be payable  
147 by contractors in the Friant Division of the Project, and collected by the Authority and paid to the  
148 San Luis and Delta-Mendota Water Authority in accordance with the terms of such  
149 Memorandum of Understanding, as it may be amended by the parties thereto from time to time.  
150 The United States acknowledges and agrees that it is not a party to such Memorandum of  
151 Understanding. While this Agreement is in effect, the Authority shall comply with the terms of  
152 such Memorandum of Understanding, as it may be amended by the parties thereto from time to  
153 time.

154 (g) Direct Charges Replace U.S. Rate Components. After the effective date of  
155 this Agreement, the United States shall not charge water rate components for conveyance  
6 operation and maintenance or conveyance pumping operation and maintenance to a Water  
157 Delivery Contractor or Party Entitled to Utilize or Receive Other Water, except to the extent (i)  
158 financial obligations otherwise properly included in such components have been incurred by the  
159 United States prior to the date of this Agreement and have not been included as an expense  
160 therein under the ratesetting policies for the Project; or (ii) the United States has paid or provided  
161 funding to the Authority for delivering water to a Water Delivery Contractor or Party Entitled to  
162 Utilize or Receive Other Water to cover a deficiency in payment.

163 (1) To the extent the Authority's cost recovery methodology includes  
164 recovery of power costs for conveyance pumping that are incurred by the United States for the  
165 production or transmission of such power, the Authority shall remit such funds to the Contracting  
166 Officer within thirty (30) days after receipt of the Contracting Officer's billing therefor.

167 (2) All costs recovered pursuant to the Authority's cost allocation  
168 methodology and not required to be remitted to the Contracting Officer pursuant to this  
169 Article 11(g) shall be immediately available for funding the costs of the Authority pursuant to  
170 this Article 11.

171 (h) Deposits of Amounts Collected. Amounts collected by the Authority  
172 pursuant to this Article 11 shall be placed on deposit or otherwise invested in accordance with  
173 the Authority's investment policy and in conformance with State law to be expended solely for  
174 purposes of this Agreement. All interest accruing on said account shall be property of the  
175 Authority, and not of the United States, and shall be applied against OM&R costs.

176 (i) The Contracting Officer agrees that material changes in Project operations  
177 affecting the quantity of water to be delivered or in Project finances may affect the ability of the  
178 Authority to carry out its obligations under this Agreement. Under such circumstances, the  
179 parties will meet and confer as to emergency measures available to reduce the economic hardship  
180 to the Authority, the Water Delivery Contractors, and/or Parties Entitled to Utilize or Receive  
181 Other Water.

182 2. Article 12 of the Transfer Agreement is deleted in its entirety and replaced with  
183 the following:

184 WATER ACCOUNTING

185 (a) The Contracting Officer's water accounting system shall be the source  
186 data utilized in maintaining water delivery records and in allocating costs for all Water Delivery  
187 Contractors and all other parties utilizing or receiving water from the Project Works. The water

198 accounting system shall fully and accurately document the allocation and deliveries of water  
189 through the Project Works and account for financial transactions affecting the Water Delivery  
190 Contractors, the Friant Division Contractors required to make payments via the Friant Water  
191 Users Authority to the San Luis and Delta-Mendota Water Authority pursuant to the  
192 Memorandum of Understanding described in Article 11(f) hereof, and all Parties Entitled to  
193 Utilize or Receive Other Water with an obligation to pay therefor.

194 (b) The Contracting Officer shall direct the Water Delivery Contractors and  
195 other Parties Entitled to Utilize or Receive Other Water to provide the Authority and the  
196 Contracting Officer with water delivery and payment information for all water delivered to said  
197 Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water pursuant to  
198 this Agreement. All water accounting records created or maintained by the Authority under this  
Agreement shall be subject to Article 14 hereof and shall be accessible by the Contracting  
200 Officer.

201 (c) In order to further their mutual goals and objectives, the Contracting  
202 Officer and the Authority shall communicate, coordinate, and cooperate with each other, in order  
203 to improve the OM&R of the Project, including the financing thereof. The communication,  
204 coordination, and cooperation shall include, but not be limited to, any action which will or may  
205 materially affect the quantity or quality of Project Water supply, the allocation of Project Water  
206 supply, and Project financial matters, including but not limited to, budget and water accounting  
207 issues. The communication, coordination, and cooperation provided for hereunder shall extend  
208 to all provisions of this Agreement. Each party shall retain exclusive decision making authority  
209 for all actions, opinions, and determinations to be made by the respective party.

210 (d) The Contracting Officer acknowledges that some or all of the Water  
211 Delivery Contractors and Parties Entitled to Utilize or Receive Other Water may appoint the  
212 Authority as agent for such parties or may otherwise designate, in writing, the Authority to act as  
213 an intermediary with the Contracting Officer concerning the water accounting or financial  
214 information. Upon notice, in writing, of such relationship, the Contracting Officer agrees to  
215 recognize the Authority in such capacity.

216 3. Article 16 of the Transfer Agreement is deleted in its entirety and replaced with  
217 the following:

218 NOTIFICATION OF THIRD PARTIES

219 16. (a) The Contracting Officer shall instruct all Water Delivery Contractors and  
220 all Parties Entitled to Utilize or Receive Other Water delivered or conveyed through the Project  
221 Works that, effective March 1, 1998, the Authority became the Operating Non-Federal Entity  
222 with respect to the Project Works. The Contracting Officer shall inform all parties to be so  
223 notified of the Authority's rights, authorities, and obligations under this Agreement and any other  
224 agreements relevant to the Authority's status as the Operating Non-Federal Entity, and shall  
225 cooperate with the Authority in ensuring that all such parties timely and properly make all  
226 required payments to the Authority. Without limiting the foregoing, the Contracting Officer  
227 shall direct all such parties to simultaneously provide the Authority with copies of all water  
228 delivery schedules provided to the Contracting Officer. The Contracting Officer shall also  
229 inform all parties to be notified pursuant to this Article 16(a) that, after the effective date of this  
230 Agreement, the United States shall not charge the conveyance operation and maintenance cost

231 component or the conveyance pumping operation and maintenance cost component heretofore  
232 calculated by the United States pursuant to its ratesetting policies for the Project to Water  
233 Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, except to the extent  
234 financial obligations otherwise properly included in such components have been incurred by the  
235 United States prior to the effective date of this Agreement and have not been included as an  
236 expense therein under the ratesetting policies for the Project.

237 (b) The Secretary shall include in all agreements providing for the delivery or  
238 conveyance of water through the Project Works which are entered into, renewed, or amended  
239 after May 29, 1998, a provision requiring that, while this Agreement is in effect, the Authority  
240 shall be the Operating Non-Federal Entity with respect to the Project Works. All such new,  
241 renewed, or amended agreements shall include provisions recognizing the Authority's status as  
242 the Operating Non-Federal Entity, and shall require that the non-Federal parties to such  
243 agreements timely and properly make all required payments to the Authority. Such new,  
244 renewed, or amended agreements shall also include provisions requiring the non-Federal parties  
245 to such agreements to simultaneously provide the Authority with copies of all water delivery  
246 schedules and water delivery and payment information provided to the Contracting Officer. The  
247 Contracting Officer shall also include in all such new, renewed, or amended agreements a  
248 provision confirming that, after May 28, 1998, the United States shall not charge the conveyance  
249 operation and maintenance cost component or the conveyance pumping operation and  
250 maintenance cost component heretofore calculated by the United States pursuant to its ratesetting  
251 policies for the Project to Water Delivery Contractors, or Parties Entitled to Utilize or Receive

257 Other Water, except to the extent financial obligations otherwise properly included in such  
253 components have been incurred by the United States prior to the effective date of this Agreement  
254 and have not been included as an expense therein under the ratesetting policies for the Project.

255 4. Subsection (d) of Article 18 of the Transfer Agreement is deleted in its entirety.

256 5. Except as specifically amended by the terms of this Amendment, the Transfer  
257 Agreement shall be and remain in full force and effect.

258 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as  
259 of the day and year first above written.

260 APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*James E. Turner*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

261 By: *Kirk Chole*  
262 Regional Director, Mid-Pacific Region  
263 Bureau of Reclamation

264  
265 FRIANT WATER USERS AUTHORITY

266 (SEAL)

267 By: *Sal [Signature]*  
268 Chairman, Board of Directors  
269

270 Attest:

271 *Don Fultz*  
272 Secretary

273 (I:\FWUA Rel.wpd)